

UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF NEW YORK

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ELAINE L. CHAO, Secretary of Labor,  
United States Department of Labor,

Plaintiff,

v.

E & D LLC D/B/A THE PRIME GRILL,  
A Limited Liability Corporation;

Defendant.  
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Civil Action  
File No.

:

COMPLAINT

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07 CV 7422

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Plaintiff, ELAINE L. CHAO, Secretary of Labor, United States Department of Labor, brings this action under Section 17 of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. §201, et seq.), ("the Act"), alleging that defendants violated sections 7, 11(c), 15(a)(2), and 15(a)(5) of the Act.

I

Jurisdiction of this action is conferred upon the Court by Section 17 of the Act.

II

Defendant, E & D LLC D/B/A THE PRIME GRILL, is a corporation duly organized under the laws of New York having its principal office and place of business at 60 East 49<sup>th</sup> Street, New York New York 10165, within the jurisdiction of this court, where defendant is engaged in the restaurant business.

III

Defendant corporation regulates the employment of all persons it employs, acts directly and indirectly in the corporation's interest in relation to the employees, and is thus an employer of the employees within the meaning of section 3(d) of the Act.

IV

Defendant employs employees at the place of business in the activities of an enterprise engaged in commerce or in the production of goods for commerce, including employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce. The enterprise has had an annual gross volume of sales made or business done in an amount not less than \$500,000.00. Therefore, the employees are employed in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of section 3(s)(1)(A) of the Act.

V

Defendant in many workweeks violated the provisions of sections 7 and 15(a)(2) of the Act by employing many of their employees for workweeks longer than those prescribed in section 7 of the Act without compensating the employees for their employment in excess of the prescribed hours at rates not less than one and one-half times the regular rates at which they were employed. Therefore, defendant is liable for unpaid overtime compensation and prejudgment interest on the unpaid overtime compensation under section 17 of the Act.

VI

Defendant violated the provisions of sections 11(c) and 15(a)(5) of the Act, in that defendant failed to make, keep, and preserve adequate and accurate records of the employees and of the wages, hours, and other conditions of employment which it maintained as prescribed by the Regulations issued and found at 29 CFR Part 516; more specifically, the records kept by the defendant failed to show adequately and accurately, among other things, the hours worked each workday, the total hours worked each workweek, the regular rate of pay, the basis upon which wages were paid, the total straight-time earnings for each workweek, and/or the total overtime

compensation for each workweek.

VII

Defendant since October 23, 2004 has violated the provisions of the Act as alleged above.

WHEREFORE, cause having been shown, plaintiff prays for judgment against defendant providing the following relief:

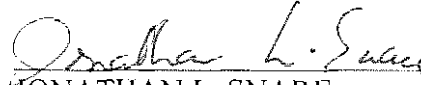
(1) For an injunction issued pursuant to Section 17 of the Act permanently restraining defendant, the officers, agents, employees, and those persons in active concert or participation with defendant, from violating the provisions of sections 7, 11(c), 15(a)(2) and 15(a)(5) of the Act; and

(2) For an injunction issued pursuant to Section 17 of the Act restraining defendant, the officers, agents, employees, and those persons in active concert or participation with defendants from withholding the amount of unpaid overtime compensation found due defendant's employees and prejudgment interest computed at the underpayment rate established by the Secretary of Treasury pursuant to 26 U.S.C. §6621; and

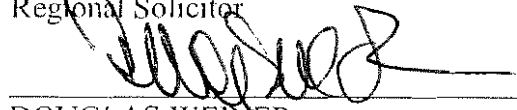
(3) For an order awarding plaintiff the costs, fees and other expenses of this action; and

(4) For an order granting such other and further relief as may be necessary and appropriate.

DATED: August 7, 2007  
New York, New York

  
JONATHAN L. SNARE  
Acting Solicitor of Labor

  
PATRICIA M. RODENHAUSEN  
Regional Solicitor

  
DOUGLAS WEINER  
Senior Trial Attorney  
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